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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,419	07/29/2002	Roger J. Westcott	1832	5115

7590

08/04/2003

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EXAMINER

FONDA, KATHLEEN KAHLER

ART UNIT

PAPER NUMBER

1623

DATE MAILED: 08/04/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/088,419

Applicant(s)

WESTCOTT ET AL.

Examiner

Kathleen Kahler Fonda, Ph.D.

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 12-21, 26-35, 40-42, 44-47, 49-52, 54, 71, 74, 75 and 80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-21, 26-35, 40-42, 44-47, 49-52, 54, 71, 74, 75 and 80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

Art Unit: 1623

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Any rejection or objection made in a prior Office action and not expressly repeated herein is overcome by Applicant's amendments and/or arguments.

Claims 1-8, 12-21, 26-35, 40-42, 44-47, 49-52, 54, 71, and 74 are again rejected, as set forth in the Office action of 05-07-03, under 35 U.S.C. 102(b) as being anticipated by AHAMED et al. (U).

Claims 1-8, 12-21, 26-35, 40-42, 44-47, 49-52, 54, 71, 74, 75, and 80 are again rejected, as set forth in the Office action of 05-07-03, under 35 U.S.C. 102(b) as being anticipated by WURZBERG et al. (AA).

Claims 1-8, 12-21, 26-35, 40-42, 44-47, 49-52, 54, 71, and 74 are again rejected, as set forth in the Office action of 05-07-03, under 35 U.S.C. 102(b) as being anticipated by YASUI et al. (V).

Applicant's arguments filed 06-16-03 have been fully considered but they are not persuasive. With regard to each of the three anticipation rejections over AHAMED, WURZBERG, and YASUI, Applicant argues that the references do not anticipate

Art Unit: 1623

because they do not teach potato starch. This argument is not persuasive because the recitation "potato" merely indicates the source of the starch. Absent a showing that starch extracted from a potato has a different structure or different properties from starch extracted from any other source, the recitation of "potato" is not seen as limiting the claim. Attorney argument that "[i]t is well known in the art that potato starches are not freeze-thaw stable and thus a freeze thaw stable potato starch is novel" (page 10, next-to-last paragraph of the response of 06-16-03) cannot take the place of evidence. Applicant was advised in the previous Office action that since the Office does not have the facilities for preparing the claimed materials and comparing them with prior art inventions, the burden is on Applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

Claims 1, 74, 75, and 80 are again rejected, as set forth in the Office action of 05-07-03, under 35 U.S.C. 103(a) as being unpatentable over AHAMED et al. (U).

Applicant failed to address this ground of rejection in the response of 06-16-03.

Art Unit: 1623

Claims 1, 74, 75, and 80 are again rejected, as set forth in the Office action of 05-07-03, under 35 U.S.C. 103(a) as being unpatentable over YASUI et al. (V).

Applicant failed to address this ground of rejection in the response of 06-16-03.

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Papers relating to this application may be submitted to Technology Center 1600 by facsimile transmission. The number of

Art Unit: 1623

the fax machine for official papers in Technology Center 1600 is (703) 308-4556. Any document submitted by facsimile transmission will be considered an official communication unless the cover sheet clearly indicates that it is an informal communication.

INTERNET INFORMATION: Secure and confidential access to patent application status information is now available; see <http://www.uspto.gov/ebc/index.html> for more information. Also, <http://www.uspto.gov/web/offices/ac/comp/fin/clonedefault.htm> may be used to pay patent maintenance fees, pay non-filing application fees, and maintain USPTO deposit accounts.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kathleen Kahler Fonda, at telephone number (703) 308-1620. Examiner Fonda can generally be reached Monday through Friday from 7:30 a.m. until 4:00 p.m. If the Examiner cannot be reached, questions may be addressed to Supervisory Patent Examiner James O. Wilson at (703) 308-4624. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-1235.

  
Kathleen Kahler Fonda, Ph.D., J.D.  
Primary Examiner  
Art Unit 1623